

identity alignment versus the total number of positions while introducing vacant positions artificially", such as was disclosed in the original specification, e.g., at page 11, lines 5-13. As will be explained below, Applicants submit that these changes overcome the outstanding rejections of the Examiner.

In the final rejection, the Examiner objected to the specification under 37 C.F.R. § 1.821(d) on the basis that sequence identifiers had not been provided with regard to Figures 1-4 and 8-10. Applicants have traversed this rejection by virtue of the present amendments to the specification which now includes the sequence identifiers.

In the final rejection, the Examiner rejected Claims 54-78 under 35 U.S.C. § 112, first paragraph, as non-enabling on the basis that these claims encompassed Tbp2 derivatives and variants because of the recitation of the word "derived." Without addressing the merits of this rejection, Applicants have traversed this rejection by deleting the term "derived" from the claims and substituting therefor the term "obtained" which is clear on its face and overcomes the Examiner's rejection under 35 U.S.C. § 112, first paragraph.

In the Final Rejection, the Examiner also rejected claims 54-78 under 35 U.S.C. § 112, first paragraph, on the basis that apart from Applicants' specification, there was no statement in the record to the effect that the strains referred to in the claims were deposited in a publicly available depository under the terms of the Budapest Treaty. Without addressing the merits of this

rejection, Applicants now traverse this rejection by providing herewith a Statement indicating that the deposit referred to in the specification is an acceptable public depository and that the deposit complied with the terms of the Budapest Treaty.

In the Final Rejection, the Examiner rejected claims 54-78 under 35 U.S.C. § 112, second paragraph, on the basis that the use of the term "maximal homology alignment" made the claim indefinite. Without addressing the merits of this rejection, Applicants have now traversed this rejection by deleting the term "maximal homology alignment" from the claims, and by substituting the phrase "maximum amino acid identity alignment versus the total number of positions while introducing vacant positions artificially", such as was disclosed in the original specification, e.g., at page 11, lines 5-13. As stated in the description on page 11, the considered sequences are aligned to calculate the percentage of amino acids which are identical with respect to the total number of positions. To achieve optimum alignment that has maximum amino acid identity, it becomes necessary to introduce vacant positions artificially, which is the usual practice in the art to determine the degree of homology.

Accordingly, it is submitted that the claims as amended would be readily understood by one of ordinary skill in this art, and are thus proper in all respects under 35 U.S.C. § 112.


Finally, in the Final Rejection, the Examiner rejected the claims under 35 U.S.C. § 102(b) on the basis that although the claimed invention related to deleted fragments not disclosed or

suggested in the prior art references, the term "derived" as used in the claims encompassed variants and derivatives, and as such were anticipated by the amino acid sequences disclosed in the prior art references. Without addressing the merits of these prior art rejections, Applicants have traversed the prior art rejections by deleting the word "derived" from the claims and replacing it with the word "obtained", and thus it can no longer be argued that the prior art references cited by the Examiner anticipate or make obvious Applicants' invention as reflected in the claims as presently amended. It is thus submitted that the prior art rejections are respectfully traversed by the present amendments, and should be withdrawn.

Accordingly, upon entrance of the present amendment, Applicants submit that the present application will overcome all outstanding rejections of the Examiner and will be in condition for immediate allowance. Such action is earnestly solicited.

Respectfully submitted,

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